that contributed to make the majority report of the Massachusetts Commission in 1892 objectionable. It may be questioned, however, if the act in its failure to make registration compulsory does not stop short of effecting the best results. The option given to landholders to transfer by deed as heretofore, or by record of title, is in effect the establishment of a dual system of transfer. Such a system was emphatically pronounced "unworkable" by an English Commission in 1868. Even though the dual system be not unworkable, compulsory registration of title possesses marked advantages. It certainly hastens the time when all land titles shall be conclusively evidenced by registration. Information as to the working of the Illinois act will be eagerly awaited.

In a recent note on *Greenwood Ice & Coal Co.* v. *Georgia Home Ins. Co.*, 17 So. Rep. 83 (Miss.), 9 HARVARD LAW REVIEW, 218, the case of *New York Central Ins. Co.* v. *National Protection Ins. Co.*, 14 N. Y. 85, was cited, but the following recent New York decisions which have kindly been furnished by the Hon. William M. Ross of the Onondaga County bench were overlooked: *Pratt* v. *The Insurance Co.*, 130 N. Y. 206; *Empire State Ins. Co.* v. *American Central Ins. Co.*, 138 N. Y. 446; *Knaus* v. *Gottfried Krueger Brewing Co*, 142 N. Y. 70; *Bank of New York Ass'n.* v. *American Dock & Trust Co.*, 143 N. Y. 559.

An examination of these cases shows that the test now applied by the New York courts as to whether an agent may represent both parties is whether or not he is invested with discretion. No other jurisdictions seem to have recognized this distinction. Contracts made by the agent as representing both parties are held voidable, regardless of lack of discretion in the agent, and the agent is not allowed to recover commission from either party in absence of their knowledge of the dual agency. *Connel* v. *Smith*, 142 Pa. St. 25; *Rice* v. *Wood*, 113 Mass. 133; *Berlin* v. *Farwell*, 31 Pac. Rep. 527 (Cal.); *Bell* v. *McConnell*, 37 Ohio St. 396; *Kronenberger* v. *Fricke*, 22 Ill. App. 550; *Salomons* v. *Pender*, 34 L. J. Ex. 95. But see *Hammond* v. *Bookwalter*, 39 N. E. Rep. 872 (Ind.). The test of discretion is distinctly repudiated in *Porter* v. *Woodruff*, 36 N. J. Eq. 174, and *Jansen* v. *Williams*, 55 N. W. Rep. 279 (Neb.).

As to the agent's right to commission from both parties where he simply introduces them and they make their own contract, see *Montraso* v. *Eddy*, 94 Mich. 100; *Green* v. *Robertson*, 64 Cal. 75.

ISSUE LIVING — CHILD EN VENTRE SA MÈRE. — *In re Burrows*, [1895] 2 Ch. 497, a recent English case, raises a point of interest and significance. The case turned upon the construction of a will, which devised property to A for life, and upon her death to B, for her absolute use and benefit in case she have issue living at the death of A; "but in case she has no issue then living," then over. At the time of A's death, B was *enceinte*, and the following day gave birth to a living child. The question thus sharply presented on the facts was, whether the child *en ventre sa mère* was "issue living" within the meaning of the will. Chitty, J., who sat as judge, refusing to distinguish between "child" and "issue" as an over-refinement, held that the child was to be deemed living at the death of A, for the benefit, not of the child, but of B.

The result reached by the court, although going far beyond the generally stated rule, that a child is treated as born when for his benefit, is certainly supported by cases arising under the rule against perpetuities (Gray on Perp., §§ 220–222), if not by others. An important case in this connection is that of *Blosson* v. *Blosson*, 2 D. J. & S. 665, where an opposite conclusion was arrived at. There, however, the phrase was "born and living," practically contrasting birth with life; and, besides, the consequences of regarding the unborn child as born would have resulted in postponing his enjoyment of certain property for years, a decided detriment, instead of benefit, to the child. The effect of that decision may, therefore, be limited to cases which would have an injurious influence on the interests of the infant *en ventre sa mère*. On the broader question of whether the child is to be treated as alive or not, when his interests are not concerned, there is little if any authority against *In re Burrows*. The cases under the rule against perpetuities are, perhaps, to be specially justified by the arbitrary nature of that rule and the better fulfilment of the testator's intention by such an extension of time. At the bottom, however, the notion is the same, and the refusal to include the living though unborn child under the words "issue or child living," in most cases, defeats the real meaning of the testator. Historically, perhaps, the law has looked at this from a different point of view, but, in logic and reason, would not the other attitude be the better, to consider the issue which by the course and order of nature is a living thing, as alive, unless some good grounds be shown, as in *Blosson* v. *Blosson*, for holding otherwise?

WHO CAN QUESTION A DEVISE TO A CORPORATION? — The Court of Appeals of Maryland has just been called upon to take sides on the question whether the power of a corporation to take by devise more property than is allowed it by its charter can be questioned by the testator's heirs, or only by the State. The court recognized the existence of the two doctrines and chose the latter, adopting the view of the United States Supreme Court in *Jones* v. *Habersham* (107 U. S. 174) rather than that of the New York court in *In re McGraw* (111 N. Y. 66). As a matter of authority, the choice was with the weaker side. In the Supreme Court case, the question seems to have been passed over without much consideration, for no reasons are given to support the proposition, and the authorities cited are not in point; moreover, the circumstance that the case did not require a decision on this subject confirms the impression that the court did not give the matter its serious consideration. In the New York case, on the other hand, the subject was thoroughly investigated; the point was squarely involved, over a million dollars were at stake, and counsel and court were profuse in their researches. The New York decision appears to have been followed by nearly every court which has had actually to pass upon the question; the judges who have expressed *dicta* to the contrary seem, like the Supreme Court, to have taken the matter largely for granted, and to have failed to make an important discrimination.

The confusion seems to arise from treating a taking by devise on the same footing as a taking by deed. Whether there is any true ground for the distinction may be a matter of dispute, but it will at least aid in a clearer understanding of the subject if the two questions are not treated as identical. As to a conveyance by deed where a corporation is forbidden to take the